ly in cases of fraud and mistake where it has been found impossible to so restore the parties to their original position, and where injustice would result were the court to refuse to act. *Freeman* v. *Reagan*, 26 Ark. 373; *Colson* v. *Smith*, 9 Ind. 8; *Paquin* v. *Milliken*, 163 Mo. 79. In the last mentioned case, which, like the principal case, was brought to cancel notes, the court said, "The general rule is that a court of equity in decreeing the cancellation of a contract must set aside the contract *in toto* or not at all, and will deny it where the parties cannot be substantially placed in *statu quo*, but it is also held that the fact that the *status quo* cannot be restored will not prevent a rescission where such condition results from the fraud of the defendant, and without the fault of the plaintiff." In the principal case, the defendant set up two reasons why the notes should not be cancelled, first, that by reason of plaintiff's resale of the property, the defendants could not be placed in *statu quo*, and second, that a partial rescission of an entire contract cannot be had. Both these defences were lightly overruled however, the court merely stating that there had been a total failure of consideration for the notes, apparently not deeming it necessary to cite any authority whatever, and evidently ignoring any merit in these defences which have been so successfully pleaded in many similar cases. The method of arriving at the decision illustrates the tendency of modern equity courts to relieve the individual parties and to do justice, even at the cost of established equitable doctrines.

CHARITIES—CHARITABLE GIFT—VALIDITY.—Testator bequeathed fifty thousand dollars to and for a hospital building and home for poor widows and orphan children to be built in the city and county of Boulder, Colorado; provided the city, by its officers, or the County Commissioners and their successors, would support the same; otherwise to certain designated legatees. *Held*, the bequest was void since equity had no jurisdiction to enforce it by appointing a trustee. *Robbins et al.* (*Ewing, Intervener*) v. *Hoover et al.* (Colo. 1911) 115 Pac. 526.

Indefiniteness of beneficiaries was not fatal to the attempted gift. Such is often unavoidable from the nature of the benefited class which is usually a changing and fluctuating one. Even bequests to the poor are valid. *Hunt* v. *Fowler*, 121 Ill. 269, 12 N. E. 331 and cases there cited. After acknowledging this, the court said, "yet, where there is an entire absence of trustees and no details or plans for carrying out the testator's object, and no method prescribed for executing the trust and no delegation of power to anyone to select the particular beneficiaries" the same cannot be enforced; citing PERRY, TRUSTS, Ed. 5, §§ 722, 729, 731. The *cy pres* doctrine followed by Massachusetts and other states and the broad English chancery doctrine of enforcement of trusts under the King's prerogative as *parens patriae* was definitely repudiated. *Jackson* v. *Phillips*, 14 Allen, 539. The position of the court is sustained by *Grimes' Executors* v. *Harmon*, 35 Ind. 198. There the court held it could not supply a trustee to enforce a charitable use where one was in no way indicated by the donor. This would be the law in such states as require as great a certainty in charitable as in private trusts. EATON, EQUITY, p. 395. This view differs widely from the practice in Massachusetts and a great many

other states, including New York. *In re Griffin's Will*, 167 N. Y. 71. In general, equity never permits a trust to fail for want of a trustee, (EATON, EQUITY, p. 358,) and particularly one of a charitable character. REDF. WILLS, Ed. 2, 805. Trustees have been appointed for indefinite charitable trusts in the following cases, *Howard* v. *American Peace Society*, 49 Me. 288; *Williams* v. *Pearson*, 38 Ala. 299; *McCord* v. *Ochiltree*, 8 Blackf. 15. There the principles of the English equity jurisprudence have been held incorporated into the local chancery practice without the necessity of the prerogative power. In *Williams* v. *Pearson, supra,* the court states that it is no objection to the validity of the trust that the donor has appointed no trustee or that the one appointed is incapable of taking. Upon the facts of the case it would seem that the testator must have intended that the county or city officials should have the duty of administering the trust, as it is provided that one or the other must agree to support the institution. The court held that the county supervisors had no power to make such an agreement, but its decision of course destroyed all chance of the city officials complying with the condition.

COMMERCE—INTERSTATE COMMERCE—CONTINUOUS SHIPMENT—VIOLATION OF ELKINS ACT.—A cargo of sugar was shipped from Hamburg, Germany, destined, as the bill of lading stated, "to Philadelphia for transportation in bond to Raymond, Alberta," Canada, and it was taken to its destination by continuous and uninterrupted transportation at the hands of successive carriers. The cargo was transported across the northeastern and northern part of the United States by railroad and water carriers. The defendant railway company carried it over part of the route at a less rate than would have been lawful if the shipment had originated at Philadelphia. In fact the rate charged in this case was scarcely more than half the rate established, published and filed, in compliance with the Elkins Act (Act Feb. 19, 1903, c. 708, 32 Stat. 847, [U. S. Comp. St. Supp. 1909, p. 1138]), for shipments originating at Philadelphia. It was the charging of this rate which was alleged to be a criminal offense. *Held,* that the said Elkins Act concerning interstate commerce did not apply to such a shipment, because there was no delivery or change of title within the United States and the different carriers were merely assisting in a continuous transportation from one foreign country to another. The Court said, "such a transaction is not within the mischief which the act was intended to remedy, and it certainly does not seem to be within the language of the statute." *United States* v. *Philadelphia & R. Ry. Co.* (D. C., E. D. Pa. 1911) 188 Fed. 484.

The cases concerning this particular phase of the application of the Elkins Act have been in conflict. The above decision justifies American carriers in discriminating in favor of foreign shipments to foreign consumers, as against American shipments to American consumers. Ocean competition may constitute a dissimilar condition, and circumstances and conditions which exist beyond the seaboard of the United States can be legitimately regarded for the purpose of justifying a difference, in rates charged by railroads, between import and domestic traffic. *Texas & Pac. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 16 Sup. Ct. 666, 40 L. Ed. 940. But it has been